

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA, <i>ex rel.</i>	)	
J. Douglas Strauser, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 4:18-cv-00673-GKF-SH
	)	
STEPHEN L. LAFRANCE HOLDINGS,	)	
INC. <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	

**JOINT NOTICE IN RESPONSE TO THE COURT’S JULY 15, 2021 ORDER**

The parties submit this Joint Notice in response to the Court’s order dated July 15, 2021, Dkt. 367. The parties do not believe any of the pending evidentiary motions need to be adjudicated prior to summary judgment because the parties believe the Court can resolve the motions for summary judgment without considering any disputed evidence.

- **Relator’s Position:** The evidentiary motions do not need to be decided given that as a matter of law Relator’s motion should be granted on the identified issues of falsity and materiality; the evidence that Relator has attacked in his MILs and *Daubert* motions as inadmissible is also irrelevant to these summary judgment issues and not sufficient to create a genuine dispute as to the material facts.
  
- **Defendants’ Position:** The evidentiary motions do not need to be decided given that, as a matter of law, Defendants’ motion should be granted based on the application of the public disclosure bar and based on Relator’s inability to show that Defendants knowingly submitted false claims. The Court may grant relief entirely in Defendants’ favor based on these independent and separate grounds that justify complete relief in Defendants’ favor without consideration of any disputed evidence.

If, however, the Court deems any of the disputed evidence relevant to its summary judgment ruling, the parties agree that the Court does not need to address at this time whether any of the disputed evidence is admissible for purposes of trial; any resolution of evidentiary disputes would be limited to the admissibility of that evidence for purposes of summary judgment.

- **Relator's Position:** Relator has noted in his summary judgment papers where certain evidence relied on by Defendants is inadmissible and addressed by a pending *Daubert* or MIL (Dkts. 344, 347, 350 (Relator's *Daubert* motions), Dkt. 355 (Relator's Motion in Limine to Exclude Testimony by Undisclosed Witnesses) & Dkt. 356 (Relator's Motion to Strike Hearsay Declarations and to Preclude Their Use at Trial)). As for Defendants' anticipated motion to strike Relator's affidavit, the affidavit is consistent with Relator's deposition testimony, statements, and the allegations in his complaints, which will be addressed more fully if and when Defendants file their motion.
- **Defendants' Position:** Defendants have demonstrated in their briefing why certain evidence that Relator has disputed is properly admitted for purposes of summary judgment, including in the *Daubert* briefing and in their oppositions to Relator's Motion in Limine to Exclude Testimony by Undisclosed Witnesses and Motion to Strike Hearsay Declarations and to Preclude Their Use at Trial, and that to the extent the Court deems that evidence relevant to its summary judgment ruling, it should be admitted for the reasons set forth in Defendants' briefing. In addition to the pending motions that the Court asked the parties to address through this joint filing, Defendants intend to file a motion to strike Relator's affidavit that he submitted in opposition to summary judgment as it pertains to the public disclosure bar of the federal False Claims Act and relevant state false claims acts because the affidavit contradicts Relator's prior testimony and statements. If the Court deems the disputed affidavit relevant to addressing the public disclosure bar issue, that evidentiary dispute may need to be resolved for purposes of summary judgment.

Dated: August 16, 2021

Respectfully submitted,

/s/ Cory S. Buland

William Christopher Carmody  
Arun Subramanian  
Cory S. Buland  
SUSMAN GODFREY L.L.P.  
1301 Avenue of the Americas, 32<sup>nd</sup> Fl.  
New York, New York 10019  
Tel.: (212) 336-8330  
bcarmody@susmangodfrey.com  
asubramanian@susmangodfrey.com  
cbuland@susmangodfrey.com

Jonathan J. Ross  
TX Bar No.: 007791575  
SUSMAN GODFREY L.L.P.  
1000 Louisiana St. Suite 5100  
Houston, TX 77002

/s/ Selina Coleman

Frederick Robinson (*admitted pro hac vice*)  
Selina Coleman (*admitted pro hac vice*)  
Megan Fanale Engel (*admitted pro hac vice*)  
Daniel Z. Herbst (*admitted pro hac vice*)  
Andrew Lu (*admitted pro hac vice*)  
REED SMITH LLP  
1301 K Street, N.W., Suite 1000 - East Tower  
Washington, D.C., 20005  
202-414-9200; 202- 414-9299 (facsimile)  
frobinson@reedsmith.com  
scoleman@reedsmith.com  
mengel@reedsmith.com  
dherbst@reedsmith.com  
andrew.lu@reedsmith.com

James V. Garvey (*admitted pro hac vice*)

Tel: (713) 651-9366  
Fax: (713) 654-6666  
jross@susmangodfrey.com

Halley W. Josephs  
SUSMAN GODFREY L.L.P.  
1900 Avenue of the Stars, Suite 1400  
Los Angeles, CA, 90067-4405  
Tel: 310-789-3100  
Fax: 310-789-3150  
hjosephs@susmangodfrey.com

Shelley R. Slade  
Janet L. Goldstein  
VOGEL, SLADE & GOLDSTEIN, LLP  
1300 Connecticut Ave., N.W., Suite 701  
Washington, D.C. 20009  
Tel.: 202-537-5903  
sslade@vsg-law.com  
jgoldstein@vsg-law.com

Michael Burrage  
WHITTEN BURRAGE  
512 North Broadway, Avenue, Suite 300  
Oklahoma City, OK 73102  
Tel: 405-516-7800  
Fax: 405-516-7859  
mburrage@whittenburrage.com

Joel L. Wohlgemuth  
OK State Bar No. 9811  
Jo Lynn Jeter  
OK State Bar No. 20252  
NORMAN WOHLGEMUTH CHANDLER  
JETER BARNETT & RAY  
401 S Boston Ave, Suite 2900  
Tulsa, OK 74103  
Tel.: (918) 583-7571  
Fax: (918) 584-7846  
jlw@nwcjlaw.com  
jlj@nwcjlaw.com

*Attorneys for Plaintiff/Relator J. Douglas  
Strauser*

VEDDER PRICE P.C.  
222 North LaSalle Street, Suite 2600  
Chicago, IL 60601  
312-609-7712; 312-609-5005 (facsimile)  
jgarvey@vedderprice.com

Caleb S. McKee  
HOLDEN LITIGATION, Holden, P.C.  
15 East 5th Street, Suite 3900  
Tulsa, OK 74103  
918-295-8888; 918-295-8889 (facsimile)  
CalebMcKee@HoldenLitigation.com

*Attorneys for Stephen L. LaFrance Holdings,  
Inc., Stephen L. LaFrance Pharmacy, Inc.,  
and Walgreen Co.*

/s/ Matthew M. Curley  
Matthew M. Curley (*admitted pro hac vice*)  
Jeff Gibson (*admitted pro hac vice*)  
John C. Eason (*admitted pro hac vice*)  
Brian F. Irving (*admitted pro hac vice*)  
BASS BERRY & SIMS PLC  
150 Third Ave. South, Suite 2800  
Nashville, Tennessee 37201  
(615) 742-6200  
mcurley@bassberry.com  
jgibson@bassberry.com  
jeason@bassberry.com  
birving@bassberry.com

Mary Quinn Cooper (OBA #11966)  
Jessica John Bowman (OBA #30388)  
MCAFEE & TAFT  
Two W Second Street, Suite 1100  
Tulsa, OK 74103  
(918) 587-0000  
maryquinn.cooper@mcafeetaft.com  
jessica.johnbowman@mcafeetaft.com

*Attorneys for Defendants Arcadia Valley  
Drug Co., Daleco, Inc., Ellisville Drug  
Acquisition Co., Jarco Pharmacies, Inc.,  
Stephen LaFrance, Jr. and Jason LaFrance*

**Certificate of Service**

This certifies that all counsel of record were served via the Electronic Case Filing (ECF) System on August 16, 2021.

/s/ Cory S. Buland  
Cory S. Buland